THE POLL TAX

Challenge for Democracy

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This pamphlet was prepared in cooperation with the Southern Conference for Human Welfare, an organization of representative Southerners interested in improving the social, educational, agricultural, and industrial conditions of the South. Its officers are: Frank P. Graham, Chairman; Louise O. Charlton, Honorary Chairman; Clark H. Foreman, Treasurer; Mollie Dowd, Secretary; C. Howard Lee, Executive Secretary. Vice Chairmen: Mary McLeod Bethune, Barry Bingham, Louise O. Charlton, Tarleton Collier, John P. Davis, Edwin A. Elliott, J. M. Horton, Stanton E. Smith, and Carl G. Thompson, Jr. The officers of the organization's Civil Rights Committee are: Maury Maverick, Chairman, and Joseph S. Gelders, Secretary. The Conference has its headquarters at the Hotel Patten, Chattanooga, Tennessee.

THE POLL TAX

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CHALLENGE FOR DEMOCRACY

An Introductory Note

By FRANK P. GRAHAM *

THIS SURVEY is a compact and timely presentation of the case against the poll tax as a prerequisite to voting in eight Southern states. It is packed with facts and logic. It is timely with the spirit of human liberty and humane democracy now tragically renounced or crushed in more than half the world. With freedom under the heel of dictators, minorities persecuted, and small democracies under the cruel threats of force and darkling shadows of war, it is well that we look at our own undemocratic ways.

There is hope for our freedom and democracy in the increasing insistence of Americans for suffrage. A clear reply to the wide-ranging totalitarian trumpets against decadent democracy is the robust faith of the writers of this study—all of them Southerners—as they state the case for democracy. They would save the disinherited millions from becoming the instruments and victims of dictators—corporate, fascist, and communist. They write out of loyalty to the best traditions of the South to which as individuals they are giving unreservedly their best in clear thinking and courageous action. They are also associated as leaders in the Southern Conference for Human Welfare which for a year now has made the poll tax a special object of its study and action through its committee on civil rights.

The struggle for political democracy has, in historic stages, centered in the battles for the right to vote as basic to the American system of local-state-Federal cooperative self government. Denials of the right to vote on the grounds of property, race, and sex have given way before the advance of common men and women along the rough road toward democracy. Across this road the poll tax stands as a surviving barrier to the right to the participation in self government of Americans even now disinherited in the land of their fathers.

Jefferson and Jackson, pioneer battlers for the suffrage rights of the people in an old Southern tradition, speak again in these pages of contemporary Southerners as they cry out against the undemocratic poll tax in eight Southern states.

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AMERICANS WITHOUT VOTES

By BARRY BINGHAM *

THE CASE against the poll tax as a prerequisite to voting is equally strong, in my belief, on both social and political grounds. Socially, the vice of the poll tax is its open flouting of democratic principles. Politically, its vice is the tool it provides for corruption of the ballot by machines, plus its woeful failure to produce a high quality of political leadership among the limited class in whose hands it places the franchise.

We hear many dire warnings about the growth of communism, fascism and other alien doctrines in this country. Such theories of government are supposed to be imported from abroad. They are regarded as the antithesis of Americanism, yet right here in our poll tax states one of the principal end results of both Communism and Fascism, the abrogation of free suffrage, has long flourished under the apathetic eyes of American patriots.

It is impossible to expect a man to have any true regard for democracy if he cannot enjoy the fundamental advantages that democracy offers, such as suffrage. What stake has a man without a vote in a democratic government? Might he not be an easy prey to the specious glitter of dictatorship, which drags all men down to his own political level?

It has been generally assumed that the poll tax in the South mainly disfranchises the Negro, and that such a result was the sole purpose of those who instigated the system. The first supposition is wrong and the second is open to the most serious question. It is estimated that 64 percent of the white adult voters have been disfranchised in the poll tax states, and in every one of those states more whites than Negroes are barred from the ballot box as a direct result of this tax. On the original purposes of the poll tax movement, historical facts speak for themselves. The laws requiring payment of a poll tax as a prerequisite to voting stem from the 1890's and the early 1900's. They were all established in states which had a considerable Negro population. By a clever device, poll tax revenues were frequently dedicated to school funds, thereby giving the legislation a double-barrelled appeal. A certain Mr. Bulger of Talapoosa County displayed commendable frankness in advocating the poll tax in Alabama in 1901. "What we would like to do in this country," he averred, "more than any two other things, would be to disfranchise the darkies and to educate white children."

That was a popular rallying cry, and the poll tax as a requisite to voting fastened itself on Alabama and nearly every other Southern state. It is interesting to note, however, that this apparent effort to protect white supremacy against the Negro who had the audacity to vote did not occur until three decades after the war between the states, and long after the worst days of Reconstruction. The nineties, on the other hand, were marked by the rise of the Populist movement, that curiously American form of radicalism that once loomed rather

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large on our political horizon. In 1892, it will be remembered, the Populist candidate for President carried three states and gave the Democratic Party a run for its life in Georgia and Alabama. William Jennings Bryan also emerged in that era as a leader of the underprivileged classes. Isn't it possible that certain members of the entrenched ruling class in the South became apprehensive of the growth of a people's party in the South, which might unite the interests of the poor whites and the Negroes? Wasn't it a fear of "radicalism" among the sharecroppers and lower class whites that may have been at least partly responsible for poll tax legislation at the turn of the century, masking under the old issue of white supremacy?

Let me give you the figures for the percentage of adult citizens who voted in each of the poll tax suffrage states in 1936, the year of a presidential election: Alabama, 20.4 percent; Arkansas, 18.5; Florida, 37.8; Georgia, 19.6; Mississippi, 16.2; South Carolina, 14.1; Tennessee, 33.5; Texas, 26.2; and Virginia, 25.7. That works out to an average of 24.1, the worst voting record shown anywhere in the world under even a pretense of a democratic system of suffrage. Even in Mexico, twice as many people cast their ballots as the 24 percent who vote in our poll-tax ridden group of states.

Let us examine the voting record of these Southern states. From 1896 to 1916, the total vote of the poll tax suffrage states actually declined 18 percent, though the population of those states increased 50 percent. Virginia, the mother of Presidents and the cradle of our democracy, polled only 25 percent of its citizens of voting age in 1936, as against a remarkable percentage of 92.1 of adult citizens voting the same year in West Virginia, where no poll tax barrier exists. Are the people of Virginia less capable of governing themselves than the people of West Virginia? In North Carolina the poll tax as a prerequisite to voting was repealed in 1920, and the popular vote immediately began to climb. From 1916 to 1932, the vote in this state actually increased 142 percent. North Carolina sent 839,000 people to the polls in 1936 against a mere 115,000 for South Carolina, which has poll tax suffrage. Kentucky and Tennessee are almost exactly equal in population, but Kentucky cast 911,000 votes in 1936 against poll-taxed Tennessee's 473,000. Have Americans in some states a better right to vote than Americans in other states?

On the political side, the most serious indictment of poll tax suffrage is the medium it provides for corruption of elections. Political machines for years have made a regular practice of buying blocks of poll tax receipts for their henchmen and herding them in to vote the will of the political boss. The system provides an excellent method for machines to control state and local politics. Thomas Jefferson plainly perceived this type of danger from a limited franchise, and remarked that "the government of Great Britain has been corrupted, because but one man in ten has a right to vote for members of Parliament. The sellers of government, therefore, get nine-tenths of their price clear. It has been thought that corruption is restrained by confining the right of suffrage to a few of the wealthier of the people; but it would be more effectually restrained by an extension of that

right to such members as would bid defiance to the means of corruption."

An argument can certainly be made for an oligarchy or a plutocracy, a government controlled exclusively by a small class who possess property and position. Such a limited group might theoretically be expected to select the most useful public servants and place only the highest type of citizen in office. But the history of the South in the past forty years has given cold comfort to such a theory. The states with poll tax suffrage have elected precious few men of outstanding ability to public office, and they have placed some of the most extreme demagogues the country has known in the seats of the mighty. It was Louisiana before poll tax repeal that perpetrated Huey Long on the United States Senate. Alabama's Tom Heflin came up by the same route. The ferment of social unrest, stimulated by a harsh restriction on suffrage, has pushed the demagogues up through the thin crust of the voting public. The fact that South Carolina, for instance, has sent as little as 6.1 percent of its population to the polls to vote has not assured the election of men of the highest ideals of public service. The politician in the poll tax suffrage states makes, on the average, just as cheap a campaign and plays just as shamelessly on ignorance and prejudice as the office-seeker who must woo the entire citizenry of a state at voting time.

The whole system of poll tax suffrage is a direct though unavowed flouting of the democratic process. It is too easy for a man who owes his election to only 6 percent of the people of his state to represent the interests of that 6 percent to the exclusion of the other 94 percent. Where the voting class is small, it is naturally dominated by vested interests, whose greatest desire is to maintain the status quo and assure financial profits. Some of the cleverest demagogues the South has produced have succeeded in serving as agents of entrenched wealth while posing as the plainest and simplest men of the people. Among the most useful servants that selfish interests in the South have enjoyed have been red gallus boys from the poll tax states. It is easy to understand why the states with poll tax suffrage have lagged behind all others in social legislation. The people who want laws to protect labor, the tenant farmer and the bottom income group from exploitation are seldom the people who can pay a poll tax.

What is the basis of the effective opposition to poll tax repeal? Not all the opposition shows itself on the surface, but the two arguments most frequently employed are the danger of Negro political dominance and the danger of loss of revenue to the schools. The white supremacy argument was hammered home in front page editorials in Arkansas papers during the repeal fight there in 1938, but statistics from states that have abandoned poll tax suffrage prove conclusively that Negro voting does not increase disproportionately after repeal. The Democratic Party, the traditional "white party" in the South, actually made gains in North Carolina after repeal, cutting down the Republican vote from 42.7 percent in 1920 to 33.3 percent in 1936. There are counties in North Carolina where Negroes predominate, yet there has been no suggestion of Negro political control in those counties since repeal. With only one Southern state

now showing as much as 50 percent Negro population, and that proportion steadily declining, it is not flattering to Southern whites to suggest that Negroes will capture political dominance if they are allowed to vote.

The argument that revenues will be dangerously cut by abolition of poll tax suffrage is almost equally hollow. In the first place, such states as North Carolina have continued to draw revenue from poll taxes without opposition after severing the connection between payment of the tax and the right to vote, and that course is open to other states. In the second place, poll tax revenues provide only a fitful income which nowhere plays an important part in the state's financial structure. Alabama collects as little as 67 cents from this source for every one hundred dollars of its total revenue, while Virginia hit a high level when it secured 1.86 percent of its revenues from the poll tax in 1937. It would seem more important to grant all citizens the right to vote than to insist on the preservation of a minor tax source for which a subsitute could be found.

The real opposition to the repeal of poll tax suffrage, however, lies beneath the surface of most printed arguments. It is lodged in the conviction of a small group of Southerners on the upper rungs of the economic ladder that they are more entitled to rule than the public at large. These people often have the sayings of Thomas Jefferson and the tenets of democracy hot in their mouths, yet they privately fear the dangerous experiment of a government that is really of, by and for the people. They mistrust the motives of the man in the street, the man looking for a job, the man working another man's land. They cannot persuade themselves that those men are created equal to themselves. Down in their hearts, they treasure a belief in Alexander Hamilton's dictum that "the public is a great beast."

TOOL OF STATE MACHINES

By GEORGE C. STONEY *

THE poll tax is designed to keep people from voting. This truth is hidden in the circumlocutions of legal terminology, but anyone who watches the law in operation will see that this is the way it works out.

The amount of revenue collected by the tax has never been seriously considered when laws governing it have come up for revision. All eight poll tax states allot proceeds from this source to school funds. In no one state does the amount collected add up to 5 percent of the total appropriation made for education. The many variations in methods of levying poll tax in the eight states have been developed not to make it a more equitable, more easily collectible or more lucrative tax, but rather to make it a more potent and more effective political device. Each of the states has its own way of collecting the tax, and in each political chicanery is very much involved.

During the ten years before South Carolina adopted her poll tax law, the small farmers of the state had combined themselves into Republican and Independent political groups that were threatening the solidarity of one-party democracy. Worried legislators reasoned that a $1 voluntary tax would keep from the polls the poor farmers, black and white, who were the substance and support of this opposition group. Yes, one spokesman pointed out, but that same tax would also eliminate many equally poor people who are Democrats. So South Carolina's Constitutional Convention made payment of the tax necessary only for those who want to vote in general elections. Those content to vote only in the Democratic white primary (whose rules and eligibility requirements are set up not by the state but by private party officials) need pay no poll tax. The Democratic primary then became, and has remained, the only significant election. South Carolina's poll tax is the first line of defense for her one-party system. Curiously enough, the poll tax provision has not been revised since the 19th amendment was passed, so South Carolina's women folk can vote scot free!

Virginia is not as considerate as South Carolina. Both sexes in the state must pay a $1.50 a year levy in order to vote in either primaries or general elections. If a voter fails to pay his fee one year, he must pay $3.00 the next year, plus interest charges. If he misses payment for two successive years, then he must pay $4.50, plus additional interest and penalty charges.

At first glance it looks as though Virginia is determined to get this extra revenue for her schools. And yet . . . No bills are sent out. No notice is given that the tax is due. The collector will not *take* the money unless it is offered six months before election time. One can go all through life, as most Virginians do, and many have to do, without ever paying a poll tax. The only penalty may be the loss of the right to help name one's Governor. According to the *Richmond* (Va.)

* Member of staff of the "Suffrage in the South" inquiry, a project under the auspices of the New School for Social Research.

Times Dispatch, many of the state's political leaders recognize this situation. It reports that in the Blue Ridge counties, Democrats and Republicans have been outbidding each other for the privilege of aiding people to become full-fledged (voting) citizens, by paying their poll taxes for them. This service is reserved, however, for those who are willing to mortgage their citizenship with a promise to vote "right." To have your tax paid by another is against the laws of Virginia, as it is against the laws of most of the other seven poll tax states. Virginia newspapers of all political persuasions have admitted that flagrant misuse of the poll tax exists. Governor Price mentioned it specifically in a speech made early in 1940. There have been dozens of charges. There have been no convictions. Authorities condone these violations with an attitude of "Why should we interfere? Everybody does it," or "Can you prove it?" It is, of course, difficult to prove in court that an advance of money is a gift or bribe rather than a bonafide loan.

The poll tax levies in Tennessee and Texas—$2 and $1.75 a year, respectively—are less burdensome because they are not cumulative. If a voter cannot pay up one year he cannot vote, but next time he starts from scratch. Tennesseeans who pay other kinds of taxes find a reminder of the poll tax on the top of their regular tax bills.

Despite the fact that lists of those who have paid their tax are printed (copies are sent to the Secretary of State and to all officers of elections), Tennesseeans must show their poll tax receipts when they apply for a ballot. Texans must do likewise. This is a perfect arrangement for the unscrupulous. Although directly in violation of the law, it is a common practice for ward heelers, some employers, landlords, and officers of certain organizations to pay poll taxes for their followers, employees, tenants or members. They hold the receipts until election time and then hand them out to the persons whose names they bear—with instructions—at the door of the polling place. If another election comes that year, these same receipts are recollected, stored away, and doled out at the polling place—again with instructions.

Assuming that this strange distribution of receipts is done with the full consent of the persons involved, assuming that the money paid is a bonafide loan or advance on wages, and assuming that no unfair methods are used to influence the choice of the voter, the fact remains that this common practice makes the poll tax of rather questionable value as a qualitative measure of ability to vote. Honest John Doe, who doesn't like to have anyone buy his citizenship for him and who doesn't have the cash handy, is left out in the cold. When time for payment comes, from six to nine months before election time, hard-pressed John may have little reason to think about elections. Issues of vital concern to him may develop in the campaign that proceeds the election—too late for him to qualify.

Poll tax collections in Tennessee are made by the county trustee. There is no check at all on the issuance of back-dated receipts or the issuance of blank receipts. The trustee is political king-pin of the county.

Perhaps the legislators of Georgia and Alabama were hoping to prevent this kind of misuse of the levy when they made their poll tax

cumulative. If a Georgian fails to pay his $1 tax during the first year he must in the second year pay double that amount, plus 7 percent interest and an additional $1 fine. If he fails to pay the tax during the third year, the fee is three times as high. So it goes for the entire period of poll tax liability. Thus, a farmer of 28, for example, who is just getting on his feet financially and whose growing family is beginning to make him realize the importance of taking part in the government of his country, cannot cast a first ballot until he produces $15.50 in cash.

An Alabaman of 35 who wants to cast his first vote must pay $21. The $1.50-a-year tax in his state is cumulative from the age of 21 and continues to mount up until a voter is 45. A man of 45 or over, then, must pay $36 for a first vote. A Frenchman of the same age could come to Alabama, pay all expenses of taking out his American naturalization papers and still vote with less total expense than can this native-born Alabaman! There is a thorough state auditing of all poll tax collections in Alabama. Receipts are issued by the state, and both collections and receipt carbons must be remitted to the state auditor immediately following the closing date for payment. (In both Georgia and Alabama payment must be made several months before election time.) Names of those paying taxes are published and this list is used for checking at the polls. Voters are not required to show their tax receipts. The kind of chicanery practised in Tennessee and Texas would not seem possible in Alabama.

Yet, consider what happened in one North Alabama county in the winter of 1940. Approximately $25,000 was collected in poll taxes before the February 1 deadline. (The greatest amount ever collected previously in one year was $9,474.) Over $10,000 of the $25,000 collection was received on the very *last day,* and the bulk of it was paid not by the individuals whose names were put on the receipts but by lawyers acting as "agents" for the same. Candidates on both sides had persuaded a good many people to sign up through lawyers actually acting as "agents" for the candidates. The money paid, ranging from $1.50 to $36 a person, was, of course, supplied by the candidates. So demoralizing was this situation that six of the county's most respected ministers called attention to it publicly. They condemned this wholesale buying up of votes as an "effort to undermine democracy."

The situation as regards the tax is equally unhealthy in one of Alabama's new industrial centers. Many employers of this community insist that all their men be qualified voters. A substantial percent of the poll taxes of the employees is gathered by means of the "check off" system. New employees are advanced the amount needed to pay back poll taxes, and a small amount is taken out of their pay envelopes for several weeks following. No doubt this service enables many more people to become full-fledged citizens. Yet any fair-minded person will question the effect this kind of employer-employee relationship has on the free exercise of the ballot.

In those states where the ballot is cast secretly, the individuals or corporations which have purchased other people's poll taxes are not always sure that they are getting the vote which they pay for. Undoubtedly, a good deal of double crossing does go on; but in Georgia

and perhaps in other states a method has been found for controlling the bought vote. A copy of the ballot is secured in advance and marked for the voter in accordance with the wishes of his purchaser. The voter then takes the marked ballot into the booth, deposits it in place of the ballot which he is handed at the booth, and brings the unmarked ballot back to the person who gave him the marked ballot. The new ballot is then marked for the next voter who has sold out; and so on throughout the day. In Georgia and some other states there is the additional check of the numbered ballot, so that the counters can always check the voter's number against his ballot to ascertain whether he has voted in accordance with his bargain.

Arkansas and Mississippi, the remaining poll tax states, have levies of $1 and $2, respectively. If an Arkansan fails to "assess" his tax at the proper time, months before election, he must pay an additional dollar for the privilege of voting. Mississippi's levy is cumulative for two years, or for a total of $4. In both states many more than a majority of the adults, white as well as Negro, are non-voters. Most persons in Arkansas and Mississippi make their living on the land. Their earnings for an entire year average less than one hundred dollars and frequently these earnings are completely absorbed by debts for food and clothes. For those not completely in debt there is a choice between purchasing urgently needed food or paying for the right to be full-fledged American citizens. For the many who are in debt or on the economic border line there is no choice. Governor Johnson of Mississippi has summed up the injustice of the whole situation in a single question: "Why should we refuse a man the right to vote just because he is poor?"

Drop in to any country store along the highways of the South, from Alexandria, Virginia, to El Paso, Texas. Listen to the talk going on around the stove in the back. The question isn't "Should the poll tax be repealed?" but *"How can we get it done?"*

Since the poll tax requirement is embedded in the Constitution of most of the states, repeal is difficult. In Tennessee, however, the requirement was done away with from 1873 to 1890 simply by repealing a statute. It took a new statute to make it effective again and it would seem that that too could be repealed, since the Constitution itself has not been changed since 1870. In Mississippi the Constitution requires the payment of all taxes due, but does not specify a poll tax. Repeal of the tax itself would seem to be a way out in that state. Moreover, the Constitution does not regulate voting in the primaries; a statute requires poll tax payment only to vote in primary elections but there is now a movement in the state to repeal that statute. Recently in Arkansas, a measure to repeal the tax requirement passed the legislature but was defeated at the polls. Perhaps stronger anti-poll tax organization will overcome the flood of propaganda of the opposite side. Louisiana met one such defeat at the polls before securing repeal in a second effort. An effort was made in the Alabama legislature to allow persons whose voting rights have been "in hock" since the depression to redeem those rights for $4.50, but this move was squelched by a determined minority of representatives from one section of the state. The found the poll tax a handy device for keeping the vote small and controllable—the old, old story.

OBSTRUCTING THE CONSTITUTION

By JAMES J. MORRISON *

AT THE present time two significant efforts are being made to abolish the poll tax as a limitation on the suffrage. The first of these efforts is being made through a Federal Court suit attacking the constitutionality of the poll tax and the second through a Congressional bill designed to permit voting in Federal elections without payment of the tax.

A test case attacking the constitutionality of the poll tax was recently instituted in a Federal court at Nashville, Tennessee. In this case, the plaintiff, Henry Pirtle — a Tennessee mountaineer — sued H. B. Brown, Christian G. Kopp, and W. F. Warren individually and as Judges of Election for the Fifth Civil District of Grundy County, Tennessee. Pirtle requested a judgment declaring that he was entitled to vote for a member of Congress. He showed that he possessed all the qualifications necessary to entitle him to vote but was restrained from doing so because he had not paid his poll tax. The State of Tennessee, through Attorney General Roy H. Beeler, intervened and appeared in opposition to Pirtle's petition. The case was heard in the Federal District Court at Nashville by Judges Elmer D. Davies and Leslie R. Darr. The court denied Pirtle's petition and rendered an opinion holding that the question was controlled by the decision of the Supreme Court of the United States in the case of *Breedlove* v. *Suttles*, decided December 6, 1937. It is the contention of the attorneys for Henry Pirtle that the Breedlove case does not correctly interpret and apply the Constitution of the United States.

Mr. Justice Butler, in writing the opinion for the Supreme Court in the Breedlove case, declared, "Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate." The contention of those opposed to the poll tax is that the language of Mr. Justice Butler is not supported by prior decisions of the Supreme Court nor by fundamental principles of constitutional law. For example, the Justice cited the case of ***Ex Parte Yarbrough*** as authority in support of the language quoted above. Yet we find these statements in the Yarbrough case:

> "But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution and by that alone. It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State."

In the Yarbrough case, the Court distinguished another opinion relied upon by Mr. Justice Butler, namely *Minor* v. *Happersett* in these words:

> "But the court did not intend to say that when the class or the person is thus ascertained, his right to vote for a member of Congress was not fundamentally

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based upon the Constitution, which created the office of member of Congress, and declared it should be elective, and pointed to the means of ascertaining who should be electors.

"The Fifteenth Amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the national government, and was not intended to be left within the exclusive control of the States." *

In the light of these decisions, it seems clear that the language of Mr. Justice Butler in the Breedlove case does not accurately interpret the Constitution.

The basic theory underlying the Pirtle case is that a right and privilege arising out of the Constitution of the United States is not subject to state taxation in any form. This doctrine of immunity from taxation is founded upon the essential nature of sovereignty.

The Pirtle case is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit. In the brief for Pirtle, the attorneys argue:

"The privilege of voting and the exercise of that function are most intimately connected with the vital functions of government. The elective franchise furnishes the means by which members of Congress are chosen. The selection of the individuals to perform the legislative function is necessarily governmental. It is an essential element of sovereignty.

"The franchise is conferred on the individual, not for his benefit but for the benefit of the Federal Government and for the purpose of maintaining the established constitutional system. If the states have the power to tax this franchise they have the power to destroy representative government. If they have the power to tax they have the power to say what the tax shall be. They can, therefore, levy a poll tax so high that rich men only will be able to vote.

"It is no answer to say that no state has carried the power to such an extreme. It is the existence of the power which conflicts with the Constitution and not merely the possible abuse of that power."

Where the prohibition of state taxation on a Federal right or privilege applies, the application is *absolute* and is not affected by the amount of the particular tax or the extent of the resulting interference. Mr. Justice Butler, in the case of *Trinity Farm Co.* v. *Grosjean*, used this language:

"Its application does not depend upon the amount of the exaction, the weight of the burden or the extent of the resulting interference with sovereign independence. Where it applies, the principl is an absolute one wholly unaffected by matters or distinctions of degree. Its right application is essential to the orderly conduct of the national and the state governments and the attainment of justice as between them."

The Fourteenth Amendment to the Constitution of the United States states quite clearly, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The exaction of a tax as a condition precedent to the right to vote, therefore, seems to abridge a Federal privilege. Although it is argued that in the early days of the government the requirement of a poll tax receipt was designed to enlarge the electorate, it is clear beyond all doubt that the operation and effect of the

* Among other cases to the same effect as *Ex Parte Yarbrough* are: *Pop* v. *Williams*, *Twining* v. *State of New Jersey*, *Wiley* v. *Sinkler*, and *Quarles* v. *Butler*.

poll tax today is to diminish the electorate and disfranchise hundreds of thousands of voters.

The Supreme Court of Mississippi, a state in which payment of a poll tax is required as a condition precedent to the right to vote, made the following statement concerning the purpose of the poll tax: "In our opinion, the clause was primarily intended by the framers of the Constitution as a clog upon the franchise, and secondarily and incidentally only as a means of revenue."

It is argued in support of the poll tax restriction upon the right of suffrage that the Constitution provides: "That the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the state legislature." The answer to this argument is two-fold. First, the payment of a tax is not a *qualification*. It bears no relation to the fitness of the man to cast a vote. It sheds no light on his capacity to take part in an essential function of government. It is in no sense a qualification such as a literacy test, which measures his intelligence, or a residence test which affects his familiarity with local problems and conditions. The second answer is that the poll tax requirement is a tax rather than a qualification and the power to tax a Federal privilege is not to be extended by implication. In short, the constitution is to be construed as a *whole*. No specific clause is to be weighed as if it stood alone, independent of all other constitutional provisions.

These considerations do not appear to have been urged in the Breedlove case, and the Court in that case nowhere refers to Article 1, Sec. 2, or to Article 1, Sec. 4, of the Constitution.

In order to protect those rights suspended by the poll tax, there has been introduced into Congress a bill making the requirement of the payment of this tax illegal in connection with the election of Federal officers. This bill—introduced by Rep. Geyer and known as H. R. 7534—makes it unlawful for any person, whether or not acting under the authority of a state or subdivision, to require the payment of a poll tax as a prerequisite for voting or registering to vote at any Federal election.

The constitutionality of the bill is supported by the arguments in the Pirtle case. If it is not constitutional to levy a poll tax as applied to Federal elections, it is clearly within the power of Congress to pass legislation designed to protect a constitutional right. For the Constitution gives Congress the express power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the Government of the United States or in any department or officer thereof." Moreover, the Constitution provides: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislators thereof: but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

Congress has heretofore enacted legislation with reference to Federal elections. The Federal Corrupt Practices Act is an instance. This law has been in effect since 1925 and supersedes an earlier act enacted in June, 1910. In this connection, in the case of *In Re Coy* Mr. Justice

Miller stated: "But the power, under the Constitution of the United States, of Congress to make such provisions as are necessary to secure the fair and honest conduct of an election at which a member of Congress is elected, as well as the preservation, proper return, and counting of the votes cast thereat and, in fact, whatever is necessary to an honest and fair certification of such an election, cannot be questioned."

The leading case of *Ex parte Yarbrough* supports the constitutionality of the Geyer Bill. The language of that opinion is very strong. In the opinion in this case the Court declared:

"That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration."

"If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect and elections on which its existence depends from violence and corruption. If it has not this power, it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.

"Will it be denied that it is in the power of that body to provide laws to the proper conduct of those elections? To provide, if necessary, the officers who shall conduct them and make return of the result? And especially to provide, in an election held under its own authority, for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes, from personal violence or intimidation and the election itself from corruption and fraud?

"These questions answer themselves; and it is only because the Congress of the United States, through long habit and long years of forbearance, has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted."

There has been no decision of the Supreme Court of the United States denying the power of Congress to enact such a law as the Geyer Bill and it is believed that the Supreme Court will recognize the power of Congress when the question is brought before it.

Even under the Breedlove case, in which the Court classifies the poll tax requirement as a revenue measure, a mere device for collecting the tax, legislation such as the Geyer Bill is undoubtedly constitutional. The Court's definition of the tax in that case would seem to remove it from the special protection of Article I, Section 2, of the Constitution which permits the states to determine the "qualifications" of voters. The evidence that the tax requirement is in fact a source of corruption in elections is overwhelming. Equally strong is the evidence that it is, in fact, no "qualification" since it is frequently paid by candidates or machine bosses rather than by the voter himself. A study of the history of the tax requirement in the states where we find it todays shows it to be intended to disfranchise a certain group or class of voters. Statistics show that that purpose has been accomplished. The privilege of the suffrage in Federal elections has been abridged not by setting up a standard to which voters may attain, but by instituting for them a kind of obstacle race in which the poor man whose vote is not for sale finds himself at a hopeless disadvantage.*

* Citation reference data is available upon request.

INFLUENCES OF THE PAST

By H. CLARENCE NIXON *

THERE have been two eras of poll-tax requirements for voting in American history. In the first era, following the war of the Revolution, the requirement was applied as a substitute for general property qualifications for voting and represented an intermediate step toward a wider manhood suffrage. The broadening of the suffrage was in accordance with the teachings of Benjamin Franklin, Samuel Adams, Tom Paine, and Thomas Jefferson. In the second era, beginning about 1890, the poll-tax policy was resorted to again, in the South, distinctly as a modification and limitation of Democratic suffrage, following the Populist threat to the "Solid South" and to Bourbon rule in the South. Thus the poll tax has furnished a step toward democracy and subsequently a step away from democracy, the democracy of Franklin and Jefferson.

The property test for voting was rather general in Colonial times. However, by 1789, when the Federal Constitution became operative with George Washington as President, five of the states had shifted entirely or partly from the property test to some form of tax payment for voting. These were Pennsylvania, New Hampshire, North Carolina, South Carolina, and Georgia. The movement from property test to tax test progressed rapidly in the decade following the inauguration of Government under the Constitution. Small poll taxes were supplanting property requirements, or both tax and property requirements were being abandoned. Vermont, in 1791, and Kentucky, in 1792, entered the Union with full manhood suffrage.

The popular victory of Jefferson at the turn of the century strengthened the trend toward a broad suffrage, and the emergence of the common man in the Jackson period all but completed the task of removing tax requirements for voting. Mississippi, in 1817, was the last state to be admitted to the Union with a property or tax-paying qualification. The new pace was set by the sister state of Alabama, which entered the Union in 1819 without economic restriction on voting. The spirit of equality on the frontier meant free manhood suffrage. There issued from the frontier a breeze of democracy to stimulate the general suffrage movement in the older states. The last states to give up property qualifications were Tennessee, Rhode Island, New Jersey, Virginia, and North Carolina, and the respective dates of their relinquishments were 1834, 1842, 1844, 1850, and 1856. The change in Rhode Island, where there had been no extension of suffrage since Independence, was brought about only after the formation of a People's Party in 1841 and the consequent crisis marked by Dorr's Rebellion. By 1860 tax-paying qualifications had largely disappeared. Such restrictions at that time existed only in the six states of Delaware, Massachusetts, Rhode Island, Pennsylvania, North Carolina, and Georgia.

The poll tax levy for revenue purposes, with no suffrage significance, is an old and obsolete technique. In ancient and medieval times, such

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taxes were levied on conquered peoples, colonial subjects, and unbelievers. Modern European nations have applied such taxes in the government of natives in their undeveloped possessions. A relic of Roman serfdom, it exists at the present time in three comparatively backward countries—Persia, Turkey and China—and eight Southern states.

The poll tax has been used since the Civil War, notably in the South, for non-fiscal purposes. It was utilized as an item of the "Black Codes" in several Southern states between the end of the war and the beginning of Congressional Reconstruction. The ex-slaves, who had not been granted the suffrage, were assessed for poll taxes and were sometimes seized and put to work for non-payment. In some states, as Alabama and Florida, the delinquent freedmen could be hired out to employers for payment of taxes and costs. In Mississippi, failure on the part of a freedman to pay a capitation tax was made evidence of vagrancy, for which the delinquent could be at once hired out to raise the amount of tax and cost.

These extreme measures, coupled with the denial of suffrage to Negroes, contributed directly to suspicion in the North and to the adoption by Congress of extreme measures of radical Reconstruction, accompanied by military rule, Negro suffrage, and wide disfranchisement of Southern white leaders, followed by the rise of the Ku Klux Klan with still further extremes. The period was one of ill health for race relations. Much of the turmoil could have been prevented had not first the South and then the North disregarded counsels of moderation as to Negro suffrage offered by Wade Hampton, L. Q. C. Lamar, Andrew Johnson, and Abraham Lincoln. Southern states undertook to bar all Negroes from the suffrage, only to have Congress extend it to all Negro men regardless of any lack of reading, writing and arithmetic.

The new South, after the middle of the seventies, experienced the restoration of home rule, with white supremacy and general manhood suffrage, in a period which was characterized by a wide industrial expansion and the spread of an agrarian crusade in America. Industrial progress and rural poverty were becoming evident in the South and in the rest of the country. Henry Grady in the eighties noted that in the South farmers were sinking into economic slavery. There was much evidence for the opinion that from the Potomac to the Rio Grande the merchants were prosperous and the farmers were poor. Agrarian unrest sprang from crop liens, farm mortgages, and a mounting tenancy in the face of tight money and low prices for farm products. There was a Granger movement, followed, in turn, by the Farmers' Alliance movement, the Populist movement, and the Bryan free-silver movement, accompanied by a somewhat feeble but prophetic organized labor movement.

Ben Tillman in South Carolina, Tom Watson in Georgia, and Reuben Kolb in Alabama, were among those leaders who battled in the South for the discontented. The political power of railroad attorneys and conservative Bourbons was distinctly endangered. The "wool hat" boys were on the political war path. Politics became hot, and politicians purchased firearms. Negro voters were caught between

political factions, economic groups, and even sectional differences. Something had to be done and done quickly to make the South safe for the supremacy of white Bourbon Democracy. Hence, the suffrage base was drastically reduced at the expense of Negroes and poor whites. Hang-over feelings from Reconstruction days caused many an honest man to go along with the restrictive movement. Not all were so consistently honest as Governor Aycock, of North Carolina, who did not stop with the literacy test for voting but advocated and put through an educational program aimed at universal application with inclusion of both races.

The narrowing of the suffrage in various Southern states was effected approximately within the period between 1890 and 1910. It was brought about through constitutional and statutory changes with provisions for new registration and tax-paying requirements. The registration requirements for voting were extensively discussed during the period of adoption or ratification. They generally involved literacy and property qualifications, frequently with the temporary application of variants of the "grandfather clause." Such constitutional restrictions were put into effect by Mississippi in 1890, by South Carolina in 1895, by Louisiana in 1898, by North Carolina in 1900, by Alabama in 1901, by Virginia in 1902, and by Oklahoma in 1910. Oklahoma made the use of the "grandfather clause" permanent, only to have it declared unconstitutional by the United States Supreme Court.

It was generally understood and frankly stated that these measures for regulating and restricting registration for voting were designed to take the Negro out of politics but to "disfranchise no white man." Said the Louisiana constitutional convention chairman, "Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for?" John B. Knox, president of the Alabama convention, assumed that it was within the limits of the Federal Constitution to "establish white supremacy in this state." A member of that convention was quoted as saying that he would disfranchise Booker T. Washington if he could. The campaign for ratification of the Alabama constitution of 1901 was conducted with emphasis on the issue of Negro disfranchisement. In North Carolina there had been pre-election emphasis on literacy qualifications and white supremacy.

The post-Civil War poll-tax qualification for voting was put in the Tennessee Constitution in 1870 but was not effectively applied under statute until 1890. Virginia experimented with it between 1875 and 1882, abandoning it under the governor's criticism that it "opened the flood gates of corruption." Florida started with the poll-tax requirement in 1889, followed by Mississippi in 1890, Arkansas in 1892, South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama and Virginia in 1901, Texas in 1903, and Georgia in 1908. Only North Carolina, Florida and Louisiana have abandoned the requirement.

The literacy qualifications and other registration tests were given so much popular attention as to overshadow the accompanying movement for poll-tax requirements for voting. The literacy test and the "grandfather clause" were distinctly connected with the race question

and Negro disfranchisement, with no little agitation. In comparison, the new poll-tax requirement was something of a "joker," applying equally to whites and Negroes. It was sometimes assumed that Negroes would habitually be more neglectful of voluntary payment of poll taxes and preservation of receipts than whites. But there were significant comments on the effects of the tax on white suffrage. The Birmingham *Age-Herald* (May 19, 1901) observed that it would "confine the electorate to the more conservative and intelligent portion of the population," as demonstrated in "three other cotton states." There were those who baldly said that the poll tax was an important method for getting "rid of the venal and ignorant among the white men as voters."

But, by and large, the prospective effect of the poll tax on white voting could not be emphasized and advertised, for such talk would turn the hillbillies and Populists against the whole proposal. It was effective strategy to utilize the race issue, to preach Negro disfranchisement, and to give assurance that "no white man would be disfranchised," meaning that whites would generally be allowed to register. The whites of the hills helped to vote the Negroes out of politics immediately and at the same time to prepare the way for their own gradual loss of the vote. Such results were desired by many of the conservative leaders, who wished to be troubled with Populism no more. It is not unfair to class with these leaders the president of the Alabama constitutional convention of 1901, who was a corporation lawyer with large fees from railroads, who travelled on free passes, who was scornful of the progressive movement in America, and who was severely critical of Woodrow Wilson. The whole story of the forces involved in the Southern suffrage restriction movement has not yet been told. Meaningful history here remains to be written.

SOUTHERNERS FOR SUFFRAGE REFORM

By TARLETON COLLIER *

IT IS beginning to dawn upon entrenched politicians of the old line in the South that somebody at last means business about lifting the bondage of the poll tax.

You may judge of their concern from the nature of their outcries. With many a familiar shout they hasten to defend their machines and their methods of control. You hear "States' Rights!" You hear "White Supremacy!" You hear "Sacred Institutions!" and "Party of Our Fathers!" And from these, of all men, "Purity of the Ballot!" They undertake to rally the impressive figures of respectability and economic power. Significant is their glib warning that repeal of the money qualification for voting will bring into play a vicious and uncontrollable element of voters. This may be a tip-off. They seem to know full well the techniques of control.

It is high time for them to be concerned. A people's movement, non-political and non-partisan, is on. You may be aware of it from many signs, not the least of which is an increase in volume of the office-holders' protest against the movement. In all the eight poll tax states articulate organizations, newspapers and individuals are at work to win state action in removing the poll tax as a prerequisite for voting—to make the ballot free, as it should be in a democracy.

And there are, besides, two frontal attacks on the institution of the poll tax, on the close-guarded stronghold of disfranchisement and suffrage control. Through its Civil Rights Committee, the Southern Conference for Human Welfare has gone into the courts to test the validity of the state poll tax as applied to voting in a Federal election. As another move, the Conference is seeking among its members and friends of democracy generally expressions of favor for the Geyer Bill, which would make it unlawful to require payment of a poll tax as a prerequisite for voting in any Federal election.†

The state organizations arrayed to fight the poll tax represent a wide variety of civic, social, religious, and labor interests. In Alabama, for example, where the cumulative feature of the tax is particularly oppressive, leadership in the fight has been taken by the Women's Joint

* Georgia Vice President, Southern Conference for Human Welfare.

† In its efforts in this connection, the Conference has had the south-wide as well as national cooperation of such organizations as the American Federation of Labor, Congress of Industrial Organizations, League of Women Shoppers, Descendants of the American Revolution, National Women's Trade Union League, National Negro Congress, Labor's Non-Partisan League, American Civil Liberties Union, Workers Alliance of America, National Association for the Advancement of Colored People, National Lawyers Guild, Brotherhood of Locomotive Engineers, Council of Youth Southerners, etc.

Moreover, concern and interest have been evinced by members and officers of such groups as the YWCA, National League of Women Voters, American Association of University Women, American Council on Public Affairs, Federal Council of the Churches of Christ in America, American Youth Congress, Railway Brotherhoods, Urban League, International Typographical Union, International Ladies Garment Workers Union, Fellowship of Southern Churchmen, Women's Division of the Democratic Party, Young Democrats, Farmers Educational and Cooperative Union of America, National Congress of Parents and Teachers, etc.

Legislative Council, which includes the Alabama Congress of Parents and Teachers, the State Federation of Women's Clubs, the Methodist Missionary Women, the Federation of Farm Women, and the Business and Professional Women's Clubs. Allies of these ardent groups are the Alabama Policy Committee, the A. F. L. State Federation of Labor, local affiliates of the C. I. O., the Farmers Union, and a score of other civic, labor and agricultural organizations.

The fight in Alabama presses on, the forces of progressive action undaunted by their setback a year ago, when the Alabama House of Representatives defeated by a vote of 81 to 7 a proposal for referendum on the question of abolishing the poll tax. Representatives of the vested political order gave the proposal short shrift in spite of many appeals to the contrary. The poll tax defenders recently had another opportunity to give voice to their intransigency—and to give themselves away. Interesting were responses by a group of Alabama office-holders to a poll by the *Montgomery Advertiser* on their views about the Geyer Bill. Of 13 office-holders questioned, 12 were against it for such reasons as the following:

A Mayor—"The tax eliminates an ignorant and vicious vote."

A State administration adviser—"If Washington can't leave us to conduct our own elections, what is it going to leave us?"

A Circuit Judge—"Alabama needs the poll tax as a restriction."

A Probate Judge—"We've been apprehensive since the Negroes have been participating in AAA elections. It gives them notions."

The lone official expressing favor for abolishing the poll tax was the State Superintendent of Education, Dr. Albert H. Collins. The fact that he and the Parent-Teacher Association are allied in this stand is indicative of a significant trend—particularly in view of the fact that the poll tax defenders have long insisted that the tax is indispensable to the maintenance of the schools, an argument increasingly disputed.

The arguments for the tax will never be effective again in Arkansas, declare friends of poll tax repeal who have renewed the fight. Organization for another drive against the tax is under way there under auspices of the Voters Campaign Committee, and petitions for another election are being circulated. Strength is given the movement by the Arkansas Security League, old age pension groups, farmers' organizations and tenant-farmer and sharecropper groups—among whom are thousands who feel the pinch of the restrictive law.

Across the river from Arkansas the fight is pressed with no less determination and with even greater organization. In Tennessee, a move is afoot to force an extra session of the Legislature, at which poll tax repeal would be a major issue. In this state, citizen groups are aroused by what they feel is Governor Cooper's failure to fulfil pre-election promises to move against the poll tax. This sort of failure is well-known generally in the poll tax fight. One sees current examples of it in Texas, where the "Pass-the-Biscuits" campaign promises included attack upon the poll tax, and in Georgia, where Governor Rivers asserts his opposition to the tax as a qualification for voting, but says nothing can or will be done about it.

This can mean nothing except hypocrisy—a realization, on the one

hand, by political leaders of the people's yearnings and an attempt to placate them by lip service; and, on the other hand, a readiness to yield to the pressure of the political machines and old customs without regard to the people's desires. However, that there are occasional departures from the line of orthodox talk on the part of campaigners and elected officials, even if the promises come to nothing, is one of the signs of the times and of the trends.

At any rate, the vitalized Tennessee organization of the Southern Conference for Human Welfare has sallied into the field to seek action, joining forces with groups already at work, including not only organized labor but the Davidson County Women's Democratic Club, the Young Democrats, the NAACP, the League of Women Voters (whose units are spearheads of this battle in most states), and non-partisan leagues. The total membership of the Tennessee organizations enlisted in this activity is more than 500,000. It was here in Tennessee that the Southern Conference for Human Welfare took dramatic steps to obtain a legal ruling on validity of the poll tax as a qualification for voting. In the United States District Court in Nashville the test case of *Henry Pirtle* vs. *H. B. Brown, et al.*, was instituted with a determined resolution to carry the issue to the Supreme Court of the United States if necessary. The core of the case is the contention that the poll tax as a requirement for voting in elections to fill a Federal office, is unconstitutional, in that the sovereignty of the Federal Government is impaired by a state tax upon a Federal franchise. The implications of the case are of profound importance not only to Tennessee but to the entire South.

Of course, if the case is won the fight will not be over. Dominant political machines die hard, they cling fast to their perquisites, they are stout in their defense of institutions which create in the South a lag in progressive movements and which, through a restricted and too-often controlled electorate, give rise to demagogues, charlatans, privilege and oppression.

The battle involves not only established customs but deeply rooted attitudes, and all the forces of enlightenment as well as of freedom must be turned upon the entire problem. State legislation is essential, no less than Federal legislation, and it is to seek their adoption that progressive organizations are rallying. Not only in the states which have been mentioned is the work of organization under way. The influence of the Southern Conference for Human Welfare is permeating the entire South. And its influence is being supplemented by that of older organizations in every field.

A great fight led by a great army is on. The soldiers in the battle are equipped with experience gained from setbacks of the past—with knowledge, for example, that the fight in Arkansas was lost two years ago largely because of lack of organization, with familiarity with the techniques and the hobgoblins of the opposition, and with inspiration of the beneficent results of the free ballot in neighbor states where the poll tax no longer has any relation to the ballot. And these soldiers find a new strength in the widespread demand of Southerners, young and old, of youth coming of age and mature men and women who have been too long indifferent, for their inalienable rights. The leaven of democracy is working in the South.